

# Competency and Criminal Responsibility Training for VWAs

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# Topics

- Definitions
- Timing
- Pre-trial commitments
- Post trial commitments
- Sections 7 & 8
- Section 12
- Section 35
- Questions

# What is Competency?

The defendant's ability to understand their rights and the legal process as they proceed to trial and/or their ability to assist their attorney

# What is Criminal Responsibility?

The defendant's ability to comprehend the wrongfulness of their actions and/or the defendant's ability to conform their behavior to the law at the time they commit a criminal act

# What is the Difference?

## Competency

- Defendant's mental state as the case progresses to trial
- Fluid and can change while a case is pending
- Litigated pre-trial

## Criminal Responsibility

- Defendant's mental state during the commission of the crime
- Not fluid, the assessment is focused on the time of the crime
- Litigated at trial

Competency

# How is Competency Raised?

- Usually, by the defense attorney
- Technically, it can be raised by the defense, the court, or the district attorney

# When is Competency Raised?

- Often at arraignment
  - Defendant comes into court exhibiting signs of mental illness
  - The police report may indicated the defendant was exhibiting signs of mental illness
- At times after arraignment
  - The defense attorney may realize there are mental health issues while working with the defendant
  - The court may have concerns based on the defendant's appearance/behavior in court
  - A defendant held in custody pre-trial may be sent to Bridgewater because the jail has concerns about their mental health (referred to as an 18a)



# How is Competency Determined?

- A defendant is presumed competent unless the issue of competency is raised
- Once raised, it is the Commonwealth's burden to prove by a preponderance of the evidence that the defendant is competent
- Unless there is a stipulation to competency/incompetency by either party, competency is determined by a judge following a contested hearing
- The hearing is usually based on expert testimony and/or reports regarding the defendant's competency

# How is a Defendant Evaluated?

- Court ordered evaluation
- Unilaterally by the defense

# Court Ordered Competency Evaluations

- Step 1
  - Initial evaluation done by court clinician to determine whether the defendant warrants further evaluation
  - This is not an evaluation that can be relied on at a competency hearing, this is more of a triage to assess if there is a potential issue
  - Usually occurs at arraignment, but can occur later on in the process if it is not raised at arraignment
  - If the defendant needs further evaluation, then clinician will also recommend whether the defendant needs strict security at Bridgewater, or if the evaluation can be done on an outpatient basis

# Court Ordered Competency Evaluations

- Step 2
  - Full evaluation conducted to assess whether the defendant is competent
  - This evaluation is relied upon at a competency hearing
  - If the defendant requires strict security at Bridgewater, then the court will commit the person to Bridgewater for up to 20 days to complete the evaluation
    - This 20 day period can be extended one time for an additional 20 days
    - Bridgewater can always send the person back to court sooner if they have completed the evaluation
    - This commitment is independent of bail

# Unilateral Defense Evaluations

- Less common
- Defense attorney will have the defendant evaluated for competency on an out patient basis
- The court generally does not become involved until the defense completes their evaluation
- Once the defense evaluation is produced, then the Commonwealth can move for a court ordered evaluation by the Commonwealth's expert

# Finding of Competency/Incompetency

- If parties do not stipulate to competency/incompetency, then it is a live issue for the court to decide
- A report stating that the evaluator believes the defendant is not competent is not dispositive on the issue
- The parties may agree to litigate competency by submitting reports or calling the evaluators to testify

# If the Defendant is Found Competent

- Then the case proceeds to trial in the normal course
- Competency, however, can always be raised again
- Remember competency is fluid – a defendant can be competent today and not competent tomorrow

# If the Defendant is Found Incompetent

- Case is taken off of the trial list
- Court will usually continue the case for several months
- After several months the court will usually have the defendant re-evaluated to see if they are now competent
- This can go on for a long time



# Custody While the Defendant is Evaluated for Competency

- Bail
  - The court can set a bail for someone suspected of being not competent
  - A non competent defendant can also be held following a 58A hearing
- Civil commitment
  - A defendant in need of strict security can be held at Bridgewater or another DMH facility for up to 40 days for the competency evaluation
  - This is independent of bail

# Custody of Defendant Found Not Competent

- DMH or Bridgewater can petition for the defendant to be committed for up to six months
  - This happens in the court where the criminal case is pending
- After the six months, DMH or Bridgewater can renew their petition for up to 1 year
  - This happens in the court with jurisdiction over where the defendant is held
  - This can be renewed every year

# “Up To”

- A commitment order for a defendant found not competent is not a sentence, it sets the upper limit of how long they can be held
- A defendant may be released prior to the six months, or 1 year, if the facility feels such commitment is no longer necessary
- For competency cases, this generally means the defendant has regained competency and the case can proceed as normal

# How are Competency Cases Resolved?

- Defendant regains competency and case returns to trial list
- Court must dismiss the case if the defendant is incompetent for  $\frac{1}{2}$  of the time of the maximum potential sentence
  - Life felonies the time is parole eligibility, which is 15 years
  - It is unclear what the time frame is for 1<sup>st</sup> degree murder, but there is a constitutional limit on reasonableness for how long an untried incompetent defendant can be held
- The court can dismiss the case at any point if it is in the interests of justice
- Bench trial in which defense establishes defense other than mental health
- Pre-trial probation

# Criminal Responsibility

# How is Criminal Responsibility Raised?

- By the defense
  - The defense must provide written notice of a criminal responsibility defense prior to the trial
- Unlike competency, criminal responsibility cannot be raised by the court or district attorney

# Criminal Responsibility Evaluations

- Court ordered evaluations
- Unilaterally by the defense

# Court Ordered Evaluations

- Follows the same process as competency evaluations
  - Defendant initially evaluated by court clinician to triage if a further evaluation is warranted
  - If a further evaluation is warranted, then the court will order a full evaluation
  - Often, a criminal responsibility evaluation will occur simultaneously with a competency evaluation



# Custody While the Defendant is Evaluated for Criminal Responsibility

- Bail
  - The court can set a bail for someone being evaluated for criminal responsibility
- Civil commitment
  - A defendant in need of strict security can be held at Bridgewater or another DMH facility for up to 40 days for the criminal responsibility evaluation
  - This is independent of bail

# Unilateral Defense Criminal Responsibility Evaluations

- Occur independent of any court orders
- Evaluation can be conducted either while the defendant is held on bail, or on an out patient basis
- Following either a court ordered or unilateral defense evaluation, the Commonwealth can seek to have its own expert evaluate the defendant

# Evaluators Opine that the Defendant was Criminally Responsible

- The defense will not likely make criminal responsibility an issue in the case
- Unlike competency, a defendant cannot float in and out of criminal responsibility
  - The defendant either was or was not criminally responsible
- Ultimately, whether the defendant was criminally responsible is up to the fact finder
  - The issue is whether the defendant asserts this defense at trial
- May still be an issue for specific intent crimes

# Evaluators Opine that the Defendant was Not Criminally Responsible?

- Criminal responsibility will be a live issue at trial
  - Parties may agree to have a fact stipulated bench trial

# How do Cases Resolve When a Defendant is not Criminally Responsible?

- Commonwealth dismisses the case
- Pre-trial probation
- Guilty plea/CWOF
  - Criminal responsibility is a defense that can be waived by a competent defendant
- Case goes to trial and the fact finder determines whether the defendant was criminally responsible
- Unlike competency, the court cannot dismiss the case over the Commonwealth's objection
  - Criminal responsibility, however, is not reached until the defendant is competent

# Fact Finder Determines Defendant was not Criminally Responsible

- NGRI
  - Not guilty by reason of insanity
  - Technically, the issue is whether the defendant is not guilty by mental illness or defect

# What can Happen After an NGRI?

- Like following a finding of incompetent to stand trial, the Commonwealth can petition to have the defendant committed for up to six months
- After the six months, DMH or Bridgewater can petition to have the defendant held for up to one year
  - This one year can be renewed each year

# “Up To”

- Again, like competency, the commitment is up to six months or one year and DMH or Bridgewater can decide to let the defendant out early
- DMH or Bridgewater must give the Commonwealth notice of the defendant’s release
- Can the Commonwealth “object” to the defendant being released?
  - No, but the Commonwealth can file its own petition to have the defendant committed
- The difference from the competency world is that a defendant found NGRI no longer has a criminal case to be returned to



# Sections 7 & 8

- Civil commitment for mentally ill persons who pose a danger to self or others
- Commitment is independent of criminal proceeding
- Often arises when a defendant has been restored to competency, but the facility feels that the defendant is a danger and needs to be civilly committed
- The first commitment is for six months and every subsequent commitment is for one year

# Section 12

- Civil commitment often filed by a police officer for person exhibit signs of mental illness and harm to self or others
  - Whether the person is committed is up to medical professionals
- Commitment up to 72 hours
  - Medical professionals may release person prior to 72 hours
  - Medical professionals may petition to admit someone for a longer duration
- This is not the equivalent to arrest, bail, or civil commitments previously discussed

# Section 35 “warrant of apprehension”

- Civil commitment often filed by a friend or family member of someone suffering from substance abuse who poses a risk to self or others
  - Judge determines whether the person will be committed
  - Commitment of up to 90 days, but the defendant may be released sooner if the facility determines it appropriate
- There is only one truly locked facility in the state
- Often defendants are sent to unlocked or less secure facilities
- This is not the equivalent to arrest, bail, or civil commitments previously discussed

Questions?